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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

NO. _____

JAMES PENDLETON AND SAMUEL THOMPSON,
Petitioners,

V.

UNITED PARCEL SERVICE AND
TEAMSTERS LOCAL NO. 667,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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UNITED PARCEL SERVICE &
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Come now the Petitioners, James Pendleton and Samuel Thompson, and petition the Supreme Court of the United States to issue the writ of certiorari to review a decision of the United States Court of Appeals for the Sixth Circuit, and in support thereof would show unto the Court as follows:

QUESTIONS PRESENTED FOR REVIEW

1. Whether Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. 185(a), provides a cause of action and jurisdictional basis for a discharged employee to sue his company union for breach of the collective bargaining contract and failure to fairly represent, upon the premise that the arbitration was corrupt.

2. Whether a summary judgment should have been granted under Rule 56 of the Federal Rules of Civil Procedure in favor of the company and union upon a conclusion of law that the employees' rebuttal affidavit to the company and union motion for summary judgment was inadmissible hearsay and should be disregarded.

PARTIES

The Petitioners are James Pendleton and Samuel Thompson. They were former employees of Respondent United Parcel Service and Respondent Teamsters Local No. 667. They were Plaintiffs in the original 301 action that is the subject of this petition. Thereafter, they were Appellants in an appeal to the United States Court of Appeal for the Sixth Circuit.

The Respondent United Parcel Service is the former employer of the Petitioners. It was a Defendant in the original 301 action that is the subject of this petition. Thereafter, it was an Appellee in the appeal to the United States Court of Appeals for the Sixth Circuit.

The Respondent Teamsters Local 667 is a union and labor organization. It was the exclusive bargaining representative of employees of United Parcel Service in the category of the Petitioners; and it was a party

to a collective bargaining agreement covering employees of the United Parcel Service in the category of the Petitioners. Teamsters Local No. 667 was a Defendant in the original 301 action that is the subject of this petition. Thereafter, it was an Appellee in an appeal to the United States Court of Appeals for the Sixth Circuit.

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V.

OPINIONS DELIVERED IN COURTS BELOW

There has been no formally published opinion by the Federal District Court or the Sixth Circuit Court of Appeals. The complaint, based on Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. 185(a), was filed on March 23, 1980. The discharges complained of occurred in June, 1979.

A summary judgment was granted in favor of the company and union by the District Court on April 15, 1981. The Plaintiff-Employees filed a motion for reconsideration on April 24, 1981. The District Court denied the motion for reconsideration on October 27, 1981. A copy of the Federal District Court's orders granting summary judgment and denying reconsideration thereof, both unpublished, are made Appendix B and Appendix C to this petition.

Thereafter, the Plaintiffs-Employees perfected an appeal to the Sixth Circuit Court

of Appeals, which affirmed the District Court and afforded Plaintiffs no relief, by memorandum order of February 11, 1983. A copy of the Sixth Circuit Court of Appeals' memorandum order, which is unpublished, is made Appendix A to this petition.

VI.

JURISDICTION

Petitioners pray for the United States Supreme Court to review a decision of the United States Court of Appeals for the Sixth Circuit filed February 11, 1983.

Petitioners have not prayed for a rehearing to the Sixth Circuit Court of Appeals or for an extension of time to perfect this petition to the United States Supreme Court. There is no cross-petition for the writ of certiorari.

The statutory basis for jurisdiction in this case is 28 U.S.C. 2101(c), read in conjunction with Rule 20 of the Rules of the

Supreme Court of the United States. This petition is filed within ninety days of the Sixth Circuit Court of Appeals decision.

VII.

CONSTITUTIONAL PROVISIONS AND OTHER APPLICABLE PROVISIONS OF LAW

Petitioners would show that they have been denied substantive and procedural due process of law and equal protection of the law under the Fifth Amendment of the Constitution of the United States.

The Fifth Amendment is made Appendix D to this petition.

Petitioners also have been denied the benefit of Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. 185(a). Section 301 is made Appendix E to this petition.

Petitioners have also been denied the benefit of Rule 26(e) of the Federal Rules of Civil Procedure. Rule 26(e) is made Appendix F to this petition.

VIII.

STATEMENT OF THE CASE

This petition for writ of certiorari seeks to review the grant of a summary judgment in favor of Defendant company and union in an action brought under Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. 185(a), brought by two discharged employees.

The Plaintiffs are James Pendleton and Samuel Thompson, and will generally be referred to hereafter as "employees." The Defendants are United Parcel Service and Teamsters Local No. 667, and will generally be referred to hereafter as "company," and "union."

References to the pleadings and facts cited in this petition will be made to the appendix filed with the Sixth Circuit Court of Appeals; and will be cited as (App. 1).

A.

Statement of the Facts

Mr. Pendleton and Mr. Thompson were both drivers for the United Parcel Service. Both drivers were fired upon an accusation of reckless driving. Both filed grievances under the UPS/Teamster collective bargaining contract. (App. 43)

They were represented in the grievance procedure by Teamster Assistant Business Agent Bill Owens. He showed that the cause of the accident was defective construction of the roadway. The Arkansas Highway Department had tried to fix a dip in the road by filling it in with hot mix asphalt and building it up. However, even after repair, trucks were bounced in the air, due to overfilling which made it "extremely difficult to maintain control." Between December, 1978 and May 4, 1979 there were a total of eight accidents by tractor-trailer units. The Arkansas Highway Patrol even stopped giving drivers tickets. (App. 53)

Mr. Owens had been assisted by James Darrell Clements, who was the Teamster Job Steward for UPS. He also was of the opinion that a defect in the roadway caused the wrecks. (App. 76)

The grievances are resolved under the UPS/Teamster contract by submission to an arbitration committee made up of company and union members. The Job Steward, Mr. Clements, was personally present at the grievance hearings of Mr. Pendleton and Mr. Thompson. (App. 74, 75) At the hearing, all the company proved is that accidents had happened. They did not prove that the discharged employees caused the wrecks by negligent driving. Mr. Clements stated:

To the best of my knowledge, at no point did they even contend that either driver was reckless. All they contended was that they were in an accident. (App. 81, 82)

The Joint Committee arbitration panel rejected Thompson's case right away, but could not decide the Pendleton case. Between the Thompson decision and Pendleton decision a strange thing occurred. Bill Owens, the Teamster union representative, told it to James Darrell Clements, the Teamster Job Steward. Mr. Clements told it under oath in his affidavit. The way Owens told it to Clements, a committee member on the arbitration Joint Committee came out after the Thompson decision and said:

...why didn't you let us know that you needed this case that bad. And Bill told him that, you know, he was under the impression that they were still operating like they were supposed to, that each case was heard on its merits, and that he had -- he certainly didn't think it would be necessary to get to his side of the committee and let them know that he needed it, when the facts were so clear, when everything was so clear. You know -- in other words, he didn't feel

like they needed any coaching;
it was a pretty clear-cut
case to him. (App. 88)

The above-quoted statement of facts, attributable to Teamster representative Bill Owens, has never been denied or rebutted by Bill Owens. The Defendants company and union could have denied it by affidavit in a surrebutter to the response to motion for summary judgment, and they had a second chance to deny it when the Plaintiffs filed a motion for reconsideration.

This case never went to trial. The company and union filed a motion for summary judgment. Therefore, all of the proof appears in the pleadings, affidavits, and exhibits to affidavits.

The District Court granted the company and union a summary judgment stating as follows:

Furthermore, even if
Plaintiffs could prove
that the events surroun-
ding the processing of
their grievances trans-
pired exactly as alleged,
this Court would be
unwilling to find that

the union did not exercise honesty and good faith in its representation of Plaintiffs. ... The instant lawsuit simply does not provide a vehicle for the airing of such grievances. (App. B)

The Petitioners contend the District Court denied them Fifth Amendment due process of law and the benefit of Section 301 of Labor Management Relations Act of 1947, 29 U.S.C. 185 (a) by saying that the union did not deny fair representation when it submitted their grievance to a corrupt arbitration panel.

The employees appealed to the Sixth Circuit Court of Appeals. The Sixth Circuit did not reach the corrupt arbitration panel question. It merely stated that:

However, the only evidence offered by Plaintiffs of corruption in the arbitration process is the double hearsay affidavit of Clements. Such evidence, not admissible at trial, should not be considered on a motion for summary judgment. (App. A)

The employees now contend that the Sixth Circuit's characterization of the testimony of James Darrell Clements, a Teamster Job Steward, as double hearsay violates a principle in cases decided by the United States Supreme Court that statements of agents are attributable to their principals; and that the employees were denied use of evidence essential to their case to resist the motion for summary judgment; which denied them due process of law.

IX.

REASONS FOR THE ALLOWANCE OF THE WRIT

Petitioners would show that the writ of certiorari should be allowed pursuant to the consideration set out in Rule 17(c) of the Rules of the Supreme Court of the United States because the Federal District Court and the Sixth Circuit Court of Appeals have decided important questions of Federal law which should

be settled by the Court, and further have decided these questions in conflict with applicable decisions of the United States Supreme Court.

1. SECTION 301(a) OF THE LABOR MANAGEMENT RELATIONS ACT OF 1947, 29 U.S.C. 185(a) PROVIDES A CAUSE OF ACTION AND JURISDICTIONAL BASIS FOR A DISCHARGED EMPLOYEE TO SUE HIS COMPANY AND UNION FOR BREACH OF THE COLLECTIVE BARGAINING CONTRACT AND FAILURE TO FAIRLY REPRESENT, UPON THE PREMISE THAT THE ARBITRATION OF HIS GRIEVANCE WAS CORRUPT.

Section 301(a) allows the breach of contract suit to survive, notwithstanding an exclusive grievance procedure in a collective bargaining contract, where the grievance procedure is corrupt. Vaca v. Sipes, 386 U.S. 171 (1967) clearly shows that Section 301(a) applies to disputes concerning the handling of grievances. Vaca v. Sipes, supra, also clearly establishes that the union owes a duty of fair representation to the employee covered by the collective bargaining contract.

In this case, the union contractually agreed to resolve discharge grievances in a historically corrupt panel of management

and labor. This appears through the affidavit of the union's own job steward, James Darrell Clements. The employees were represented by a Teamster assistant business agent and a Teamster job steward. Both of these Teamster representatives are agents of the Teamsters Local 667. The job steward had the courage to tell what happened in his affidavit.

Before the decision on the Pendleton case, a joint-committee arbitration pannel member stated:

...why didn't you let us know that you needed this case that bad? ... He (the employees' Teamster representative) certainly didn't think it would be necessary to get to his side of the committee and let them know that he needed it... (App. 88, and Appendix A, p. 4

There are inescapable conclusions to draw from the above-quoted statement of the job steward, attributable to the other union representative. The conclusion is that the arbitration panel in this case has "extra-judicial" or "extra-arbitral" procedures for

the resolution of cases. An arbitration procedure is corrupt if it resolves cases not on the merits, but on "extra-arbitral" communication between the union and its members on the arbitration panel. In the case of Commonwealth Coatings Corp. v. Continental Casualty Co., 393 U.S. 145 (1969), the Supreme Court affirmed that the arbitration process should be uncorruptible. Admittedly, Commonwealth Coatings was not a 301 action. However, the same principles have been applied and cited in 301 and labor cases, to wit: Marian Manufacturing Co. v. Long, 588 F.2d 538 (6 Cir. 1978); Graphic Artists International Union v. Haddon Craftsmen, 489 F.Supp. 1088 (N.D.Pa., 1979); Amerada Hess Corp. v. Local 22026, 385 F.Supp. 279 (D.N.Y. 1974); Brewery Workers Joint Local v. P. Ballentine and Sons, 72 C.C.H. Lab. Cas., para. 13,925 (D.N.J., 1973); and Local 701 Highway and Local Motorfreight Drivers v. Needham's Motor Service, 70 C.C.H. Lab. Cas., para. 13,42 (D.N.J., 1972).

The office of arbitration is to keep labor cases out of court; if the parties contract to do that, it is permissible. However, no party, especially a third party beneficiary bargaining unit member, should be bound by a corrupt procedure, and the procedure in this case was demonstrably corrupt.

Petitioners submit that a corrupt grievance procedure is not binding upon the grievants within the meaning of Vaca v. Sipes, supra., and Balowski v. The United Automobile Workers, 372 F.2d 827 (6 Cir. 1967). These cases condemn bad faith, discriminatory, and arbitrary treatment. In this case, the company and the union picked the Joint Arbitration panel; therefore, if it is corrupt as demonstrated, the company and union should suffer the loss. The grievants were not responsible for the corruption. They were utterly without power to create, control, or influence the Joint Arbitration panel.

Joint labor/management arbitration panels are inherently suspect, and they have been condemned by the courts before. It is too easy for "extra-arbitral" influences to control the cases. In Barrentine v. Arkansas-Best Freight System, 615 F.2d 1194 (8 Cir. 1980) the Court stated as follows:

A forceful argument can be made, and has been made here, that the kind of arbitration in question is subject to grave abuse, including notably, collusive secret agreements between employers and unions as a result of which the interests of the individual employee grievants may be sacrificed to arrangements that management and union labor may consider to be in their own broad interests.

2. A summary judgment should not have been granted under Rule 56(e) of the Federal Rules of Civil Procedure in favor of the company and union upon a conclusion of law that the employees' rebuttal affidavit to the company and union motion for summary judgment was inadmissible hearsay and should be disregarded.

Again, Petitioners assert that the Sixth

Circuit Court of Appeals resolved this case

in conflict with a decision of the United States Supreme Court.

It is also noteworthy that the District Court did not reject the affidavit of James Darrell Clements on a hearsay theory; and the hearsay consideration was raised for the first time by the Sixth Circuit. The District Court only said that if corruption existed, it could not be remedied in a 301 action. Then, the Sixth Circuit did not address the question of whether a 301 action provided a vehicle for redress.

This was a summary judgment case brought pursuant to Rule 56, F.R.C.P. The Defendant company and union said there was no genuine issue of material fact. The Plaintiff employees responded that there was a genuine issue of material fact; and that the contract was breached by the company and the union failed to fairly represent. The employees showed through their own Teamster Job Steward that the supposedly impartial arbitration panel

members referred to a practice or policy of being informed of the union's desire or lack of desire to win the case; and the arbitration panel member further asked why they were not informed in Mr. Pendleton and Mr. Thompson's case. (App. 88, Appendix A p.4)

The Sixth Circuit said it was "double hearsay." Petitioners contend this characterization and exclusion of the evidence by the Sixth Circuit is in conflict with a decision of this Court.

First, the conversation referred to was made by an agent of the Teamsters, James Darrell Clements, the employees' Job Steward. Secondly, the Job Steward heard the information from the lead grievance representative, an assistant Teamster Business Agent. Both the Job Steward and the assistant Business Agent are agents of the Teamsters Local 667.

The Supreme Court stated that the statements of the agent are attributable to the principal in the case of Hitchman Coal and

Coke Co. v. Mitchell, 245 U.S. 229 (1917).

Hitchman was a labor case. In 1917 the mine workers were attempting to organize the employer's mine; and the law at the time allowed the employers to enforce yellow dog contracts. The company proved that the statements of a union organizer were admissible against the union, notwithstanding the hearsay rule. The Supreme Court stated as follows:

Upon a kindred principle,
the declarations and conduct
of an agent, within the
scope and in the course
of his agency, are admis-
sible as original evidence
against the principal,
just as his own declara-
tions or conduct would
be admissible.
(245 U.S. 250)

Hearsay statements that would be admis-
sible at the trial as exceptions to the hearsay
rule may be contained in the affidavits
submitted pursuant to Rule 56. See United
States v. Dibble, 429 F.2d 598 (9 Cir. 1970).

All Rule 56(e) requires is that
"supporting and opposing affidavits shall be
made on personal knowledge ..."

The trial court allowed the company and union to move for summary judgment based upon affidavits of no wrongdoing. Then the trial court refused to credit the employees' rebuttal affidavit that the panel was corrupt; and the Sixth Circuit failed to squarely address the issue of a corrupted panel.

The trial court and the Court of Appeals both failed to apply the proper rule in disposing of a motion for summary judgment, as set out by the Supreme Court in the cases of Scheuer v. Rhodes, 416 U.S. 232 (1974) and Conley v. Gibson, 355 U.S. 41 (1957):

In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief.
(416 U.S. 236)

In Scheuer v. Rhodes, supra, the court also stated that the allegations in a complaint

should be construed favorably to the pleader.
(416 U.S. 236)

X.

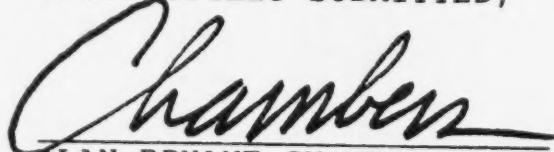
CONCLUSION

For the reasons set out in the foregoing petition, Petitioners conclude that there was a material issue of fact within the meaning of Rule 56, F.R.C.P., because a Teamster Job Steward admitted that there was a "extra-arbitral" procedure for the resolution of discharge grievances; which renders the arbitration-grievance system inherently corrupt. The company and union had a duty to third party beneficiary employees to maintain and implement an honest and fair grievance procedure.

Petitioners further conclude that their offer of proof of the corruption by way of affidavit should not have been inadmissible hearsay because the declarants were Teamster agents, who were engaged in the administration of the collective bargaining contract, a part of which was the grievance procedure.

WHEREFORE, PETITIONERS PRAY that the Supreme Court reverse the Sixth Circuit and District Court grant and affirmation of a summary judgment in favor of the company and union and order that this case be given a trial upon the merits.

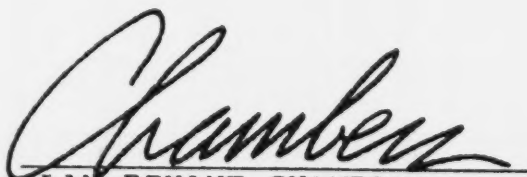
RESPECTFULLY SUBMITTED,

A large, stylized handwritten signature in cursive script, reading "Chambers". The signature is written in dark ink and is positioned above the typed name and address.

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CERTIFICATE OF SERVICE ON COUNSEL

I, Alan Bryant Chambers, Attorney for Petitioners, hereby certify that on May 12, 1983 I mailed three copies apiece of the foregoing Petition For Writ Of Certiorari to Mr. Charles White, Attorney for United Parcel Service, Third National Bank Building, Nashville, Tennessee 37219, and to Mr. Howard Paul, Attorney for Teamsters Local No. 667, Sterrick Building, Memphis, Tennessee, 38103, by placing said copies in the hands of employees of the United States Postal Service for mailing, and paying the postage thereon.

A handwritten signature in cursive script, reading "Chambers", written over a horizontal line.

ALAN BRYANT CHAMBERS
Attorney For Petitioners

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES PENDLETON and
SAMUEL THOMPSON,

PLAINTIFFS-APPELLANTS,

V.

UNITED PARCEL SERVICE
and TEAMSTERS LOCAL 667,

NO. 81-5882
FILED FEB. 11, 1983
JOHN P. HEHMAN,
Clerk

DEFENDANTS-APPELLEES.

ORDER

Before: KENNEDY and CONTIE, Circuit
Judges; and MILES,* District
Judges.

Plaintiffs, former employees of United
Parcel Service, appeal the District Court's
grant of summary judgment upholding a joint
grievance committee decision denying their
claims of wrongful discharge. For the rea-
sons stated below, we affirm the District
Court.

*Honorable Wendell A. Miles, Chief Judge.
United States District Court for the Western
District of Michigan, sitting by designation.

Plaintiffs were former "feeder" truck drivers for the Defendant United Parcel Service (UPS). Each was involved in a separate but nearly identical accident at the same location on a highway overpass in West Memphis, Arkansas. Both men were discharged pursuant to a provision of the collective bargaining agreement between UPS and the Defendant, Teamsters Local No. 667 (Union) which permitted discharge only in the case of "recklessness resulting in a serious accident." District Court Op. at 2. The Plaintiffs filed grievances claiming that their discharges were without cause in violation of this provision.

The union represented the Plaintiffs in back-to-back hearings before the Southern Conference Area Parcel Grievance Committee comprised of three Teamsters representatives and three members from UPS. The union presented evidence of six other truck accidents at the same location and argued that Plaintiffs' accidents were not caused by driver error.

The committee denied Thompson's grievance, which was heard first, but it deadlocked on the claim of Pendleton. Pendleton's grievance was subsequently denied by a "deadlock committee." That committee decides the deadlocked grievances on the record as presented by one Union and one company representative from the original grievance panel.

The Plaintiffs then brought this action against the Union and UPS under Section 301, National Labor Relations Act, 29 U.S.C. Section 185 (1976) alleging: (1) a breach of the Union's duty of fair representation in the preparation and presentation of their grievances, and (2) a breach of contract by UPS in discharging them without just cause. Defendants UPS and Union moved for summary judgment. The Plaintiffs in their response to the summary judgment motions expanded and altered their claims against the Union by alleging collusion between local union officials and the grievance panel which rendered the proceeding unfair and fraudulent. In

support of this allegation, the Plaintiffs relied primarily on the affidavit of Clements, a former Chief Union Steward, who had been present when the grievances were heard. Clements affidavit stated:

Well, after the Thompson case was heard and the decision was rendered, the Committee member, whoever it was, and I don't remember who it was, came out and spoke to Owens, made some reference to Bill (Owens)¹ or made some -- well, I guess references would be the best word to Bill that, you know, why didn't you let us know that you needed this case that bad. And Bill told him that, you know, he was under the impression that they were still operating like they were supposed to be, that each case was heard on its own merits, and that he didn't -- he certainly didn't think it would be necessary to get to his side of the committee and let them know that he needed it, when the facts were so clear, when everything was so clear. You know, he -- in other words, he didn't feel like they needed any coaching, it was a pretty clear cut case to him. And to me, and to everyone else, everyone but the committee.

App. at 88.

¹/ Owens represented plaintiffs before the joint committee.

The Plaintiffs maintained that this hearsay was evidence of a practice of "signalling" by the local union representatives to Teamsters members of a grievance panel that a favorable decision should be rendered. The District Court rejected the Plaintiffs' allegations and granted summary judgment. The court held that the Union adequately and aggressively prepared and presented the Plaintiffs' defense before the grievance committee. As to the assertion of collusion, the Court stated that it could not find the Union "did not exercise honesty and good faith in its representation" even if the events alleged were accepted as factually true. District Court Op. 4-6. Apparently, the Court construed the Plaintiffs' allegations of unfairness to simply be a complaint that the union did not attempt to "reach" the committee on their behalf. The Plaintiffs filed a motion for reconsideration which clarified their position that the committee prejudged their decisions, had no evidence of the requisite

recklessness to explain its decision, and conducted a corrupt proceeding. The District Court denied the motion, reiterating its prior position.

On appeal, Thompson and Pendleton argue that the District Court misunderstood their arguments concerning the corruption of the grievance process. Plaintiffs are not complaining that they did not benefit from the "extra-arbitral" communications, but rather that the existence of the practice of "signalling" evidences an unfair pre-judgment process. the lack of signal has the same effect as a signal in this sense. The Plaintiffs contend that, understood in this fashion, there is a sufficient factual issue presented as to corruption to withstand summary judgment.

While we agree with the Plaintiffs that the District Court may have slightly misconstrued their assertions, we find that summary judgment was nevertheless appropriate in this case. Plaintiffs no longer contend

that the Union violated its duty of fair representation in the preparation or presentation of their claims. Rather, they contend only that the proceeding itself was corrupted and its decision the product of arbitrary pre-judgment by the joint committee. However, the only evidence offered by the Plaintiffs of corruption in the arbitration process is the double hearsay affidavit of Clements. Such evidence, not admissible at trial, should not be considered on a motion for summary judgment. Daily Press, Inc. v. United Press International, 412 F.2d 126, 133 (6th Cir.), cert. denied, 396 U. S. 990 (1969). Moreover, the Plaintiff Pendleton's claim was not denied by the allegedly corrupt joint committee, but instead by the deadlock panel. There has been no claim that the deadlock panel was corrupt. Under these circumstances the District Court properly granted summary judgment for the defendants.

We affirm.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman

Clerk

ISSUED AS MANDATE: MARCH 8, 1983

FILED: FEBRUARY 11, 1983

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JAMES PENDLETON, AND
SAMUEL THOMPSON,

PLAINTIFFS,

VS.

UNITED PARCEL SERVICE, AND
TEAMSTERS LOCAL NO. 667,

NO. 80-2275-M
FILED APRIL
15, 1981

DEFENDANTS.

ORDER ON DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

Plaintiffs James Pendleton and Samuel Thompson instituted this action seeking a judicial determination that Defendant UPS discharged them from employment without cause, thereby violating their rights under a collective bargaining agreement entered into between UPS and Local Union No. 667 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (Local 667). Plaintiffs maintain that judicial review is appropriate in this case because the local had breached a duty to fairly represent

Plaintiffs in connection with the written grievances filed with the Southern Conference Area Parcel Grievance Committee (SCAPGC) contesting the validity of the discharges.

Plaintiffs seek reinstatement, backpay, and an award of damages as a result of both the alleged breach of duty by the local and the alleged violation of rights arising under the collective bargaining agreement.

The instant action arises out of two separate accidents in which the respective plaintiffs were involved. At the time the respective accidents occurred, both Plaintiffs were employed by UPS. The accident in which Plaintiff Thompson was involved occurred at 3:30 P.M. on the afternoon of March 30, 1979. Plaintiff lost control of his tractor-trailer combination while on a portion of interstate highway near the Missouri Street overpass in West Memphis, Arkansas. At 3:15 A.M. on the morning of April 26, 1979, Plaintiff Pendleton was also involved in an accident as he drove a tractor-trailer combination vehicle on the

same portion of interstate highway on which the Thompson accident occurred. Both accidents resulted in severe damage to the company-owned vehicles driven by Plaintiff.

At the time both the accidents occurred Article IX of the collective bargaining agreement between UPS and the union provided that company drivers were subject to discharge for "recklessness resulting in a serious accident while on duty." The company determined that the accidents in which Plaintiffs had been involved resulted from their "recklessness" and thus fell within the scope of Article IX of the collective bargaining agreement. Plaintiff Thompson was notified by written notice that he was to be discharged effective April 4, 1979. By written notice effective April 30, 1979, Plaintiff Pendleton was similarly discharged.

Plaintiff Thompson filed a written grievance on April 5, 1979, with both Defendant

UPS and SCAPGC. In this grievance, he contested the validity of his discharge and claimed entitlement to reinstatement and back pay. Plaintiff Pendleton filed a similar grievance on May 1, 1979. The Defendant union agreed to present to SCAPGC the grievances filed by both Plaintiffs.

Separate hearings were conducted for each of the Plaintiffs. These hearings were, apparently, conducted "back-to-back" on the same day. During the course of their separate hearings Bill Owens, a representative of Defendant union, assisted both Plaintiffs in the presentation of their respective grievances.

Under the provision of that aforementioned collective bargaining agreement, Plaintiffs' grievances were presented to the Southern Conference Area Parcel Grievance Committee for resolution. This joint committee is composed of six members -- three of whom represent management and three of whom represent the Teamsters union. All grievances are

presented to this six-member committee for resolution. The determination of the committee is considered a final and binding arbitration decision and, thus, not subject to judicial review pursuant to 9 U.S.C. § 1, et seq.

The grievance of Plaintiff Thompson was first presented to the committee. The committee denied the grievance at the close of the hearing. The Pendleton grievance was then presented. The committee, however, deferred rendition of a decision in this matter until the following morning. The committee then announced that it was unable to reach a decision on the merits of the Pendleton grievance. The grievance was then submitted to a deadlock panel for determination. The panel denied Pendleton's grievance. Plaintiffs then instituted the instant action against Defendants.

Presently before this Court is a motion by Defendants for summary judgment. Defendants maintain summary judgment is warranted against Plaintiffs because this case presents to the

Court nothing more than a difference of opinion between Plaintiffs and Defendants concerning the validity of their respective discharges. Defendants contend, and correctly so, that such a dispute is not subject to judicial review inasmuch as the dispute has been finally resolved through binding arbitration. It is their position, as supported by Vaca v. Sipes, 386 U.S. 171 (1967) that Plaintiffs can prevail in this action only if they can prove both that their respective discharges were without cause and that denial of the grievances resulted from malice, bad faith, dishonesty, or arbitrary or perfunctory conduct. Defendants maintain that Plaintiffs in this case simply cannot meet this burden of proof. The stance taken by Plaintiffs with respect to the alleged misconduct engaged in by the union and the company has changed a number of times during the course of this litigation. Originally, Plaintiffs claimed they had been denied fair representation during their respective hearings

by their union representative, Don Owens. Now, however, they contend that their union representative behaved "in a proper, aggressive and adverse manner toward the company." The position of Plaintiffs has also changed with respect to the adverse effect of the manner in which the two grievances were scheduled for hearings. Plaintiffs initially maintained that they had been prejudiced that their hearings were not scheduled back-to-back. Plaintiffs now contend that the back-to-back scheduling of their hearings severely prejudiced their respective grievances. Finally, Plaintiffs have significantly altered the thrust of their complaint against Defendants. Originally, Plaintiffs questioned the effectiveness of the representation afforded them by the union during the actual course of their hearings. Now, Plaintiffs maintain that "arbitrariness, malice and bad faith, forbidden by Vaca v. Sipes, occurred (not during the hearings but) inside the joint committee itself.

The gist of Plaintiffs' complaint as it now stands is that the procedures utilized during the processing of their grievances were so defective and unfair as to render the determination of the grievance committee, in Thompson's case, and the deadlock panel in Pendleton's case, null and void. Plaintiffs maintain that the hearings they were purportedly afforded were fatally flawed in that a determination had been reached by the members of the grievance committee even before the respective grievances were presented to them for review. Plaintiffs contend that the union and the company had reached an agreement concerning the ultimate outcome of the hearings and had instructed their various representatives on the committee to insure the appropriate outcome. It is the position of Plaintiffs as set forth in their response to motion for summary judgment that:

(T)hat the union had a history of communicating to the joint committee, outside of normal channels and procedures; but that when the Plaintiffs' case(s) came on for a hearing, they used a union representative who did not take part in prejudging the cases; and therefore, the union did not communicate to the committee that Plaintiffs' case should be won. In effect, the union represented others in a way that could attain the result sought by the grievants, but did not give this special help to the Plaintiffs.

In support of their position, Plaintiffs attached to their response to Defendants' motion the sworn statement of one James Darrell Clements. At the time the Plaintiffs' grievances were processed, Mr. Clements served as a Chief Job Steward, a Trustee, and a member of the Executive Board of Local 667. Clements was present when the grievance hearings involving Plaintiffs were conducted; he did play an active role in the proceedings, however. The statement

of James Clements is comprised of little fact. It is, in fact, filled almost exclusively with opinion. Furthermore, even if Plaintiffs could prove that the events surrounding the processing of their grievances transpired exactly as alleged, this court would be unwilling to find that the union did not exercise honesty and good faith in its representation of Plaintiffs. In fact, in this case Plaintiffs complain not that they were afforded fair and honest representation, but their union representative did not use "below the table" tactics in attempting to have their discharges overturned. The instant lawsuit simply does not provide a vehicle for the airing of such grievances. Defendants' motion for summary judgment is therefore to be granted.

IT IS SO ORDERED.

ENTER this 15th day of April, 1981.

/s/ Robert M. McRae, Jr.
ROBERT M. MCRAE, JR., JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JAMES PENDLETON, and
SAMUEL THOMPSON,

PLAINTIFF,

VS.

No. 80-2275-M

FILED October 28, 1981

UNITED PARCEL SERVICE
and TEAMSTERS LOCAL 667,

DEFENDANTS.

ORDER DENYING PLAINTIFF'S
MOTION FOR REHEARING, RECONSIDERATION,
AND/OR NEW TRIAL

Plaintiffs instituted this action seeking a judicial determination that Defendants UPS discharged them from employment without charge, thereby violating their rights under a collective bargaining agreement entered into between UPS and Local Union No. 667 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (Local 667). In their complaint Plaintiffs contended that

judicial review was appropriate because the local had breached a duty to fairly represent Plaintiffs in connection with the written grievances filed with the Southern Conference Area Parcel Grievance Committee contesting the validity of the discharges. They sought back pay and damages from Defendants.

The instant action arises out of two separate accidents in which the respective Plaintiffs, while driving company trucks, were involved. The two accidents occurred in approximately the same location and both resulted in severe damage to the company-owned vehicles driven by Plaintiffs. The company determined that pursuant to Article IX of the aforementioned collective bargaining agreement, Plaintiffs were to be discharged because they had engaged in "recklessness resulting in a serious accident while on duty." Both Plaintiffs filed written grievances with UPS and SCAPGC contesting the validity of their discharges. Local 667 agreed to present the grievances

to SCAPGC on behalf of the Plaintiffs.

Separate hearings were conducted for each of the Plaintiffs. These hearings were apparently conducted "back-to-back" on the same day. The grievance of Plaintiff Thompson was first presented to the committee. The grievance was denied and the discharge affirmed. The committee proved unable, however, to reach a decision on the merits of the grievance presented on behalf of Plaintiff Pendleton. The grievance was thus submitted to a Deadlock panel for determination. The grievance was denied.

The gist of the action presented by Plaintiffs to this court is that the local did not "communicate" to the committee that their two cases were to be won. It is their position that the grievances were denied because Bill Owens, a representative of Defendant union, did not, as was common practice, attempt to "fix" the decision of the committee. Instead, the union representative, in the words of

Plaintiffs, presented the two grievances as though "each case was (to) be heard on its own merits"

By order entered April 15, 1981, this court dismissed Plaintiffs' cause of action against Defendants. The court stated:

(E)ven if Plaintiffs could prove that events surrounding the processing of their grievances transpired exactly as alleged, this court would be unwilling to find that the union did not exercise honesty and good faith in its representation of Plaintiffs. In fact, in this case, Plaintiffs complain not that they were afforded fair and honest representation, but their union representative did not use "below the table" tactics in attempting to have their discharges overturned. The instant lawsuit simply does not provide a vehicle for the airing of such grievances.

Presently before the Court is a motion by Plaintiffs for reconsideration of its order of dismissal. Plaintiffs, however, bring to the court's attention neither new factual authority nor factual developments which would convince it that error was committed in the grant of summary judgment to Defendants. The court remains of the opinion that this basis of their complaint is that the local did not attempt to communicate to the committee its desire that the two grievances be found valid. Again, this court refuses to permit Plaintiffs to continue prosecution of an action against a union wherein their complaint charges that the union, instead of acting in good faith, chosen to "reach" an arbitration board, the decision of the board would have been different. Accordingly, Plaintiffs' motion to reconsider is hereby denied.

IT IS SO ORDERED

ENTER this 27th day of October, 1981.

/s/ Robert M. McRae, Jr.
ROBERT M. McRAE, JR., JUDGE

APPENDIX D

AMENDMENT FIVE
UNITED STATES CONSTITUTION

No person shall be held to answer for a capitol or otherwise infamous crime unless on a presentment or indictment by a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX E

Section 301(a) of the Labor
Management Relations Act of 1947,
29 U.S.C. 185(a)

Suits for violation of contract between an employer and a labor organization representing employees an industry affecting commerce as defined in this act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties.

APPENDIX F

RULE 56(e) OF THE
FEDERAL RULES OF CIVIL PROCEDURE

FORM OF AFFIDAVITS, FURTHER TESTIMONY,
DEFENSE REQUIRED. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response by affidavits or as otherwise provided in this rule must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment shall be entered against him.